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**IN THE
COURT OF APPEALS OF INDIANA**

NICKOLUS STAMPER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 17A03-0802-CR-65

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0609-FB-24

July 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Nickolus Stamper appeals the sentence imposed following his plea of guilty to burglary, a class C felony.¹

We affirm.

ISSUE

Whether the trial court erred in sentencing Stamper.

FACTS

On September 13, 2006, Stamper called the residence of his friend, Dawn Scott, in DeKalb County, Indiana. Stamper made a spurious request for roadside assistance. Once Scott left the residence to assist Stamper, Stamper entered Scott's residence without permission, with the intent to steal property. Stamper removed a laptop computer valued at approximately six hundred fifty dollars from the residence.

On September 18, 2006, the State charged Stamper with the following offenses: count I, burglary, a class B felony;² count II, theft, as a class D felony;³ count III, receiving stolen property, a class D felony;⁴ and count IV, driving while suspended, having prior judgment, a class A misdemeanor.⁵

¹ Ind. Code § 35-43-2-1.

² I.C. § 35-43-2-1(B)(1).

³ I.C. § 35-43-4-1.

⁴ I.C. § 35-43-4-2(B).

⁵ I.C. § 9-24-19-2.

On October 26, 2007, the parties tendered a plea agreement to the trial court. Pursuant to the plea agreement, the State amended count I, burglary as a class B felony, and Stamper agreed to plead guilty to the amended charge of burglary, as a class C felony. In exchange, the State agreed to dismiss the remaining counts. The plea agreement left sentencing within the trial court's discretion.

After the trial court advised Stamper of his rights and established a factual basis for his plea, the trial court accepted the plea agreement, ordered a pre-sentence investigation report, and set the sentencing hearing for December 10, 2007. Stamper failed to appear for sentencing, and the trial court issued a warrant for his arrest.

Stamper had fled to Arkansas where local authorities eventually arrested him on the warrant from Indiana. Stamper was extradited back to Indiana and a sentencing hearing was held on February 8, 2008.

The trial court found that "to the extent that there were any mitigating circumstances, they were at the very least counter-balanced by aggravating circumstances." (Tr. 31). The trial court sentenced Stamper to the advisory sentence of four years in the Indiana Department of Correction.⁶

Additional facts will be provided as necessary.

⁶ I.C. § 35-50-2-6 provides that "[a] person who commits a class C felony shall be imprisoned for a fixed term between two and eight years, with the advisory sentence being four years. In addition, he may be fined not more than ten thousand dollars."

DECISION

Stamper first contends that the trial court abused its discretion in sentencing him by failing to enter a sentencing statement. Stamper argues in the alternative that the sentencing statement was deficient.

Sentencing lies within the discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Thus, we review trial court sentencing decisions only for abuse of discretion. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

When a trial court imposes a sentence in a felony case, it must provide a reasonably detailed sentencing statement. *Id.* A trial court abuses its discretion only when (1) the trial court fails to provide any sentencing statement; (2) the sentencing statement is not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration by the defendant; or (4) the trial court's reasons are improper as a matter of law. *Id.* at 490-91. If the trial court finds aggravating or mitigating circumstances, then the trial court is obligated to identify all significant mitigating and aggravating circumstances and explain why each is aggravating or mitigating. *Id.* at 493.

1. Sentencing Statement

Stamper contends that the trial court abused its discretion in sentencing him by failing to enter a sentencing statement. We disagree.

A trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” *Id.* at 491. When assessing the adequacy of a trial court's sentencing statement, we consider all of the trial court's comments contained in the transcript of the sentencing proceedings. *See Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) (“[W]e are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.”); *see also Strong v. State*, 538 N.E.2d 924, 929 (Ind. 1989) (“In addition to the discussion set forth in the separate sentencing order, this Court has reviewed the trial court's thoughtful comments at the conclusion of the sentencing hearing.”). In short, we may discern the trial court’s intentions from either the written sentencing statement or in combination with the trial court’s comments during the sentencing hearing.

The trial court made the following sentencing statement:

Well, besides the concerns or observations that I made earlier, it, I guess it is an understatement to also observe that I don’t believe your conduct which resulted in these charges being filed or your failure to appear at a sentencing hearing on December 10 and apparent flight to Arkansas, uh, demonstrates that, that you’re concerned about, that your primary concern is about the welfare of your child. Uh the agreement, of course, called for the amendment of the most serious offense from a B felony to a C felony, calls for the dismissal of other charges. And, uh, given those considerations and everything else that’s been stated, I think that to the extent that there are any mitigating circumstances they are at the very least counter-balanced by aggravating circumstances. And I’m going to order that you serve four years at the Indiana Department of Correction.

(Tr. 30-31).

During Stamper’s sentencing hearing the trial court made several comments from which we can glean its intent. The trial court commented on the following during the sentencing hearing: Stamper failed to appear on his initial sentencing date by fleeing to

Arkansas; he committed this crime against one of his best friends; the victim's grandmother was not a wealthy woman and had saved for months to buy the laptop computer which he stole; one of the charges to be dismissed, pursuant to the plea agreement, involved a crime against his own grandfather, a man over the age of 65; and the trial court questioned whether fleeing to Arkansas was in the best interest of his three-year-old child. This evidence speaks volumes as to the nature of the offense and to Stamper's character.

The entire body of the trial court's comments at the sentencing hearing sufficiently illuminated its reasoning for imposing sentence and is supported by the record. Accordingly, the trial court did not abuse its discretion at sentencing as alleged by Stamper.

2. Mitigating Circumstances

Stamper then argues, in the alternative, that the sentencing statement was deficient because it failed to address two significant mitigators that were clearly supported in the record to-wit: 1) the fact that he pled guilty; and 2) that he had no prior adult convictions or juvenile adjudications. We disagree.

Determining mitigating circumstances is within the discretion of the trial court. *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor, nor is the trial court required to give the same weight to proffered mitigating factors as the defendant proposes. *Id.* An allegation that the sentencing court failed to identify or find a mitigating factor requires the defendant to establish that the advanced mitigating factor is

not only supported by the record but also that the mitigating factor is significant. *Anglemyer*, 868 N.E.2d at 493.

a. Guilty plea

Pleading guilty does not automatically entitle the defendant to a reduced sentence. *Payne v. State*, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005), *trans. denied*. Trial courts are still entitled to assess the probable impact or effect of the guilty plea on the proceedings. *Id.* Further, a guilty plea may not be a significant mitigator where the defendant has received a substantial benefit from the plea. *Wells v. State*, 836 N.E. 2d 475, 479 (Ind. Ct. App. 2005).

It was reasonable for the trial court to believe that the plea agreement substantially benefited Stamper. As originally charged, burglary, as a class B felony, carried a maximum sentence of twenty years. Stamper received a tremendous benefit when the burglary charge was amended to a class C felony which carried a maximum sentence of only eight years. Not only was Stamper's most serious charge reduced, pursuant to the plea agreement, but the State also agreed to dismiss two remaining felonies and a class A misdemeanor. Furthermore, there was a thirteen-month delay between Stamper being charged in September, 2006, and his plea of guilty in October, 2007. It is reasonable to conclude that this delay diminished the value of Stamper's guilty plea. A timelier plea would likely have saved the State valuable time and resources. Additionally, the small amount of time and resources that Stamper may have saved the State was easily offset by the added burden of having to locate and extradite him after he fled from Indiana. The

trial court was justified when it did not find Stamper's guilty plea to be a significant mitigator.

b. Prior convictions

A trial court's decision, not to deem a defendant's lack of prior convictions a significant mitigator, is not an abuse of discretion. *See Bunch v. State*, 697 N.E.2d 1255, 1258 (Ind. 1998) (finding no error where the trial court considered defendant's lack of prior criminal history but declined to accord it significant weight), *reh'g denied*. Although a lack of criminal history may be considered a mitigating circumstance, sentencing courts are not required to give significant weight to a defendant's lack of criminal history, especially when a defendant's record, while felony free, is blemished by multiple contacts with the criminal justice system. *Rawson v. State*, 865 N.E. 2d 1049, 1058 (Ind. Ct. App. 2007). Our court has previously stated that a trial court has broad discretion in assigning weight to the advanced mitigators. *Cotto* 829 N.E.2d at 524.

The record shows that within the past three years, the State had executed four arrest warrants against Stamper for failure to appear in court. In the instant action, Stamper had to be extradited from another state to face sentencing. Additionally, some of the criminal charges that Stamper was facing were criminal offences that occurred on different dates and against different victims, which would reasonably indicate that a pattern of criminal behavior had been or was developing. Due in part to Stamper's blatant disregard for the law, we find that the trial court was well within its discretion in refusing to accept Stamper's lack of criminal convictions as a significant mitigating

factor. *See Bostick v. State*, 804 N.E.2d 218, 225 (Ind. Ct. App. 2004) (finding no abuse of discretion where the trial court refused to consider defendant’s lack of criminal history as a significant mitigating factor due to the fact that she was leading a less than “law-abiding life”).

An examination of the trial court’s sentencing statement leads us to the conclusion that it found no significant aggravators or mitigators.⁷ The fact that the trial court sentenced Stamper to only the advisory sentence reinforces this view. Accordingly, we find that 1) the trial court’s sentencing statement was not deficient; and 2) the trial court did not abuse its discretion in sentencing Stamper.

Affirmed.

NAJAM, J., and BROWN, J., concur.

⁷ To the extent that Stamper argues that the trial court failed to weigh the mitigators properly, we direct his attention to our Supreme Court’s ruling in *Anglemyer*, which states that a trial court cannot now be said to have abused its discretion in failing to properly weigh aggravators and mitigators. *Anglemyer*, 868 N.E.2d at 491.